

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 348 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAGADAMBA CEMENTS LIMITED

Versus

NIRAJ SALES CORPORATION

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Appearance:

MR NS SHETH for Petitioner  
MR RM PARMAR for Respondent No. 1  
SERVED BY DS for Respondent No. 2

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CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 20/03/96

ORAL JUDGEMENT

Rule. Mr. R.M.Parmar, waives service of Rule on behalf of the respondents.

This revision application is against the order dt. December 7, 1995, passed below application Ex.28 in Summary Civil Suit No. 2972 of 1994 on the file of the Ahmedabad City Civil Court. Application Ex.28 was for allowing the petitioner plaintiff to withdraw Rs.1 Lakh

which came to be deposited by the respondents defendants on different dates mentioned in application Ex.28. Learned Judge, by the impugned order, dismissed the application as it was objected on behalf of the defendants for paying him on depositing the amount, to the plaintiff petitioner.

The plaintiff petitioner has filed Summary Civil Suit No. 2972 of 1994 in Ahmedabad City Civil Court for recovery of Rs.7,39,374/- with interest and costs. By consent, on defendants depositing one Lakh rupees within six weeks, leave to defend the suit was granted. The said sum was sought to be recovered by the plaintiff. The learned Judge rejected the withdrawal of the deposit amount, without assigning any reason, and merely on the basis of the endorsement made on behalf of the defendants.

Mr. Sheth, appearing for the plaintiff, submits that having regard to the facts and circumstances of the case, the learned Judge of the Ahmedabad City Civil Court should not have turned down the request of the plaintiff to withdraw the amount, inasmuch as by consent, on depositing the said amount of Rs.1,000,00/-, leave to defend the suit was granted unconditionally. In the facts and circumstances of the case, the impugned order cannot be sustained.

In the result, the revision application is allowed. Application Ex.28 stands granted. Order dismissing application stands quashed. Plaintiff petitioner to withdraw the said amount of Rs.1,000,00/- which is deposited by the defendants on furnishing security to the satisfaction of the learned Judge of the Ahmedabad City Civil Court. Rule is accordingly made absolute. No costs.

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